

REMARKS

In the office action mailed March 10, 2003, claims 1, 2 and 17 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-6, and 11-16 are rejected under 35 USC §103(a) as being unpatentable over Elliot et al. (U.S. patent 6,431,875 B1) in view of Stuppy (US Patent 6,146,148). Claims 8 and 18 are rejected under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy and in view of Mishkin (U.S. Patent 6,377,781 B1). Finally, claims 9, 10, 19 and 20 are rejected under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy in view of Siefert (U.S. Patent 6,386,883 B2).

In response to the rejection of claims 1 and 2 as being directed to a method of evaluating group-administered tests but not setting forth a step of evaluating class profiles, Applicants respectfully request reconsideration. However, each of the claims includes at least one step which would be considered an evaluation step. Namely, claim 1 includes a step of "comparing each class profile with the normative profile on a question by question basis." Similarly, claim 2 includes a step of identifying individual ones of the class profiles that excessively form the normative profile on a question-by-question basis." Applicants that such steps would broadly be considered evaluation steps, and therefore the claims are not ambiguous.

In response to the rejection of claim 11, Applicants have amended the claim to more clearly claim a step of providing a set of sub-group profiles wherein each sub-group profile comprises a plurality of individuals whose test item responses are exposed to "a common element affecting test administration." Applicants respectfully submit that the claim is no longer ambiguous.

In response to the rejection of Claims 1-6, and 11-16 under 35 USC §103(a) as being unpatentable over Elliot et al. (U.S. patent 6,431,875 B1) in view of Stuppy, Applicants respectfully submit that the claims are allowable over a combination of Elliot and Stuppy. In each of the cited references, the unit of analysis is student or test taker behavior and the references to norms are to normative student or test taker behaviors. In the case of Elliott, there are suggestions of norms of test takers who cheat and of test taker response times. In Applicant's invention, the unit of analysis is the group behavior under the direction of the test administrator. In such groups,

individual behavior is subsumed to the group. Groups may vary in skill level (the construct of the test) such that higher skilled groups will achieve a higher success rate on the test and a high 'profile.' But, the variation within the profile, on a question by question basis, will remain essentially the same for both higher and lower skill groups. Variation among group profiles, on a question by question basis, is due to variations in the test administrator behavior, not the students or test takers. Thus, while the methods of organization of data or its statistical analysis may be applied to both the norms of student behavior and the norms of test administrator behavior, the behaviors are categorically different and unrelated. The great gap between them is evidenced by the large number of instances of alleged teacher cheating, the earnest efforts by experts in the field to confirm or disconfirm the allegations, and yet the failure of any prior development of the method of the Applicant's invention.

As set forth in Applicants response mailed August 11, 2003, Elliot fails to disclose a set of class profiles by test administrator, or generating a normative profile indicative of normative class performance on the selected test, where the members of each class included in the normative profile are subject to the direction of a test administrator on the selected test. Unlike Applicant's invention which addresses generating class profiles by test administrator, as set forth in claims 1 and 2 for example, Elliot addresses problems related to test administered over the internet. For example, Elliot suggests using certain decoy questions and response times to detect cheating. Stuppy is cited for teaching a system which "develops student profiles on a battery of tests that are subject to the direction of a computer administrator, that the tests are scored and norm comparisons are made, and that students' results are tracked and managed by the computer administrator. However, Stuppy is directed to a system for tracking individual students performance against a norm, not (i) comparing class profiles with a normative profile as required in claim 1, (ii) identifying individual ones of the class profiles that deviate excessively from the normative profiles on a question-by-question basis, as required in claim2, or (iii) evaluating administration of the selected test based on the comparison of each of the sub-group profiles with the normative profiles on a question by question basis, as required in claim 11.

In particular, Stuppy discloses a system where a student takes the assessment test and answers electronically using the pen or other input device, and the answers are scored electronically so that the student's initial assessment is free of scoring and administration errors. The student may also receive a battery of tests which are generally designed to identify the


ability to perform different tasks or the mastery of certain learning objectives or skills. The assessment tests are scored and analyzed by computer to generate a student profile which is then utilized by the system of Stuppy to generate a learning program suited to that student and deliver electronic student workbooks. The student profile contains, among other data, skill gaps which need to be filled by further instruction. Ongoing assessments during the use of the system are used to expand and update the profile. (Col. 4, lines 52-57). However, neither reference discloses any evaluation based upon class profiles or sub-group profiles as claimed by Applicants. Accordingly, Applicants submit that any combination would not lead to Applicant's invention as claimed.

In response to the rejection of Claims 8 and 18 under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy and in view of Mishkin, Applicant respectfully submits that these claims are clearly allowable over the cited art for the same reason that independent claims 1, 2 and 11 are believed allowable. Mishkin is cited as teaching that individual profiles may be accumulated into larger units as defined by sessions for entire classes and groups of classes, including any sub-grouping desired based upon the number of sessions taking the same quiz. Mishkin suggests accumulating "quiz data" (Col. 4, 50-59) and fails to disclose providing a set of class profiles by test administrator or providing sub-groups comprising a plurality of individuals whose test item responses are exposed to a common external influence as claimed by Applicant. Accordingly, any combination of the references would not lead to Applicant's invention for the same reasons set forth above.

Finally, in response to the rejection of Claims 9, 10, 19 and 20 under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy and in view of Siefert, Applicants also respectfully submit that these claims are clearly allowable over the cited art for the same reason that independent claims 1, 2 and 11 are believed allowable. Siefert, which is directed to a computer assisted education program, also fails to disclose providing a set of class profiles by test administrator or providing sub-groups comprising a plurality of individuals whose test item responses are exposed to a common external influence as claimed by Applicant. Accordingly, any combination of the references would not lead to Applicant's invention for the same reasons set forth above.

In view of the above amendments and remarks, Applicant respectfully requests reconsideration of the claims.

Respectfully submitted,



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